

**SENATE . . . . . No. 255**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Cynthia Stone Creem***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to establish food allergy plans.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/1/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/7/2019</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/7/2019</i>

**SENATE . . . . . No. 255**

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 255) of Cynthia Stone Creem, Denise Provost, Sal N. DiDomenico, James B. Eldridge and other members of the General Court for legislation to establish food allergy plans. Education.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 228 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act to establish food allergy plans.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1: Chapter 71 of the General Laws, as appearing in the 2014 Official Edition,  
2 is hereby amended by inserting the following new section:-

3           Section 37S.

4           (a) For the purposes of this section the following terms shall, unless the context clearly  
5 requires otherwise, have the following meaning:-

6           "Approved private day or residential school", a school that accepts, through agreement  
7 with a school committee, a child requiring special education pursuant to section 10 of chapter  
8 71B.

9           “Charter school”, commonwealth charter schools and Horace Mann charter schools  
10 established pursuant to section 89 of chapter 71.

11           "Collaborative school", a school operated by an educational collaborative established  
12 pursuant to section 4E of chapter 40.

13           "Department", the department of elementary and secondary education.

14           “Food Allergy”, adverse health effect arising from a specific immune response that  
15 occurs reproducibly on exposure to a given food.

16           "Food Allergy Management and Prevention Plan", a comprehensive plan to manage and  
17 prevent food allergies in schools.

18           “Individualized Health Care Plan”, a plan based on information provided by the primary  
19 care provider or allergist, including, but not limited to, the following: the student’s name,  
20 methods of identifying the student, specific offending allergens, warning signs of reactions and  
21 emergency treatment.

22           'School district", the school department of a city or town, a regional school district or a  
23 county agricultural school.

24           (b) (i) Every school district, charter school, non-public school, approved private day or  
25 residential school and education collaborative in which a student with life-threatening food  
26 allergies is enrolled shall maintain a Food Allergy Management and Prevention Plan (“Plan”) to  
27 address food allergy safety and training. Districts included in this requirement shall draft the Plan  
28 and share with the guardian of a student with life-threatening food allergies within 30 days of  
29 notice of enrollment or the first day of said student’s attendance, whichever is sooner. The plan

30 shall apply to members of school staff, including, but not limited to, educators, administrators,  
31 school nurses, cafeteria workers, custodians, bus drivers, athletic coaches, advisors to an  
32 extracurricular activity, paraprofessionals, and substitute personnel. The plan shall be updated at  
33 least biennially, as long as at least one student with severe food allergies is enrolled.

34 (ii) Each plan shall include, but not be limited to: (i) protocols for identification of  
35 students with known food allergies, including medical documentation; (ii) policies for the daily  
36 management of food allergies for individual students; (iii) strategies and policies to reduce  
37 exposure to allergens for students with food allergies; (iv) clear procedures for treating allergic  
38 reactions for students with both known and unknown allergies; (v) policies for treating allergic  
39 reactions when a school nurse is available onsite and when no school nurse is available; (vi)  
40 strategies for treating allergic reactions during extracurricular activities or non-school hour  
41 events (vii) policies for school nurses to develop Individualized Health Care Plans (IHCPs) for  
42 students with food allergies; (viii) professional development for school personnel and staff  
43 members on food allergies; and (ix) notification to parents and students of food allergy policies  
44 and practices.

45 (iii) The plan shall include a provision for professional development to build the skills of  
46 all staff members, including, but not limited to, educators, administrators, school nurses,  
47 cafeteria workers, custodians, bus drivers, athletic coaches, advisors to extracurricular activities  
48 and paraprofessionals. The content of such professional development shall include but not be  
49 limited to: (i) training on reducing exposure to food allergens for students with allergies; (ii)  
50 techniques for food allergy management of students with food allergies; (iii) recognizing the  
51 symptoms of a severe allergic reaction; and, (iv) for appropriate staff, training and testing for  
52 competency in epinephrine administration. The department shall identify and offer information

53 on alternative methods for fulfilling the professional development requirements of this section, at  
54 least 1 of these alternative methods shall be available at no cost. (iv) The plan shall be posted on  
55 the website of the school district, charter school, non-public school, approved private day or  
56 residential school and education collaborative.

57 (iv) Each school principal, or the person who holds a comparable position, in  
58 consultation with a school nurse, shall be responsible for the implementation and oversight of the  
59 plan.

60 (c) The department shall waive the requirements of this section upon a showing by a  
61 school district that they have an existing food allergy management plan which substantially  
62 meets the requirements of this section. School districts seeking such a waiver must provide a  
63 detailed description of existing food allergy management plans.

64 (d) Each school district, charter school, non-public school, approved private day or  
65 residential school and collaborative school shall annually report food allergy data to the  
66 Department of Public Health School Health Services department. The data shall include, but not  
67 be limited to: (i) the number of students with food allergies in schools, broken down by type of  
68 allergy; (ii) the number and nature of food allergy incidents; and (iii) any other information  
69 required by School Health Services department. Said data shall be reported in the form and  
70 manner established by the School Health Services department; provided, that the School Health  
71 Services shall minimize the costs and resources needed to comply with said reporting  
72 requirements; and provided further, that the School Health Services department may use existing  
73 data collection and reporting mechanisms to collect the information from school districts. The  
74 School Health Services department shall analyze the food allergy data and shall publish an

75 annual report containing aggregate statewide information on the frequency and nature of food  
76 allergy incidents in schools. The annual report may be analyzed and published in consultation  
77 with any foundation or scientific organization, hospital or medical school, with an agency of the  
78 federal government, or nationally recognized nonprofit or educational organization or entity  
79 recognized for research or education in the field of food allergies. The School Health Services  
80 department shall file the annual report with the department and with the clerks of the senate and  
81 the house of representatives, who shall forward the same to the chairs of the joint committee on  
82 education, the joint committee on the public health and the house and senate committees on ways  
83 and means.

84 (e) The department, in consultation with the department of public health, the  
85 Massachusetts School Nurse Organization, and experts in the field of food allergies shall: (i)  
86 periodically update and share with school districts the Managing Life-Threatening Allergies in  
87 Schools guidelines on food allergies or successor document; (ii) publish model plans for school  
88 districts to consider when creating their plans pursuant to paragraphs (ii) through (iii) of  
89 subsection (b); and (iii) compile a list of food allergy resources, best practices and research that  
90 shall be made available to schools. The department shall biennially update the model plan and  
91 the list of the resources, curricula, best practices and research and shall post them on its website;  
92 provided however, that the department shall solicit public comment prior to establishing the  
93 guidelines.

94 SECTION 2. Chapter 111 of the General Laws, as appearing in the 2014 official Edition,  
95 is hereby amended by inserting the following new section:-

96           Section 236. The department of public health is hereby authorized to establish a program  
97 to combat food allergies and raise awareness of the prevalence and danger of food allergies. Said  
98 program may be conducted in conjunction with any foundation or scientific organization,  
99 hospital or medical school, with an agency of the federal government, or nationally recognized  
100 nonprofit or educational organization or entity recognized for research or education in the field  
101 of food allergies.

102           SECTION 3. Section 8A of Chapter 69 of the General Laws, as appearing in the 2016  
103 Official Edition, is hereby amended by inserting in line 25 after the word "resuscitation":-", the  
104 administration of epi-pens,"

105           SECTION 4. Section 54B of chapter 71 of the General Laws is hereby amended by  
106 striking the third paragraph and inserting in place thereof the following two paragraphs:—

107           Notwithstanding any general or special law or regulation to the contrary, each school  
108 shall, subject to appropriation, maintain a stock supply of non-patient specific epinephrine  
109 available to all students, including students with Individualized Health Care Plans prescribing  
110 epinephrine injections, to be administered in the event of an anaphylactic emergency. The  
111 department of public health shall promulgate regulations requiring school districts to adopt and  
112 implement policies pursuant to this section. Such regulations shall require that stock epinephrine  
113 be stored in an easily accessible unlocked location, the number and type of epinephrine auto-  
114 injectors required be based on school population, that the individuals authorized to administer  
115 epinephrine meet certain training requirements for such administration, including the use of  
116 epinephrine dose calculation devices, and that the stock inventory be checked at regular intervals  
117 for expiration and replacement. A school nurse or other authorized individual who provides,

118 administers, or assists in the administration of epinephrine to a student believed in good faith to  
119 be having an anaphylactic reaction shall not be liable for any civil damages for negligence in acts  
120 or omissions resulting from the rendering of such treatment. Whenever any employee of a school  
121 district is covered by the immunity granted herein, the school district employing the individual  
122 shall not be liable for any civil damages for negligence in acts or omissions resulting from the  
123 rendering of such treatment.

124 (b) Notwithstanding any general or special law to the contrary, the department, in  
125 consultation with the with the department of public health, shall make all reasonable efforts to  
126 obtain federal funding or reimbursement for the implementation of this act. A school may  
127 develop a funding plan that is cost-neutral to the school budget through the use of grants,  
128 donations, fundraising and any other source. The department of elementary and secondary  
129 education, in consultation with the department of public health, shall prepare a list of grants and  
130 other funding sources that a school may access in order to purchase non-patient specific  
131 epinephrine and shall publish and maintain the list on the department's website.